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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,663	12/30/2003	John R. Jamison	JEV/KAR:3194.0018	9763

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CHERNOFF, VILHAUER, MCCLUNG & STENZEL
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EXAMINER

RICHARDSON, JOHN A

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/749,663

Applicant(s)

JAMISON, JOHN R.

Examiner

John Richardson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on January 03 2005
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims 1-10, 12-17, 19-39

- 4) ☒ Claim(s) 1-10, 12-17, 19-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-17, 19-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date Jan 03 2005.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Final Rejection

1). The applicant's letter dated January 03 2005 enclosing 37 CFR 1.132 Declaration and amending claims 1, 12, canceling claims 11, 18, and adding new claims 22-39.

2). The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3). Claims 1 to 8, 12 to 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the 0.50- 95 Winchester as disclosed in Cartridges of the World by Barnes, in view of Precision Reloading by Jamison, January 1996 for the reasons set forth in Office action dated July 26 2004, item 2).

Applicant's arguments filed January 03 2005 have been fully considered but they are not persuasive. In response to applicant's arguments in the 37 CFR 1.132 Declaration and the Remarks (pages 14-16 of the January 03 2005 Amendment) it is the examiner's position that that, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the

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prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

The applicant appears to making an argument that the prior art cited in the Office action dated July 26 2004, does not define over the applicant's invention because the said prior art would quote ***constitute a dangerous mismatch of firearm and cartridge***. It is the examiner's position that safety considerations are not a consideration cited anywhere in the claim language and furthermore the prior art is capable of being used at the pressures noted and if only operated for one time only, would still define over the applicant's claims. It is also noted that in the applicant's latest IDS dated January 03 2005, items CO and CP cite circumstances wherein the applicant has failed to supply firing test information to show that a .300 cartridge is not capable of withstanding internal gas pressures of at least 50,000 psi.

Accordingly claims 1 to 8, 12 to 17, and 19 are rejected for the reasons set forth in Office action dated July 26 2004, and for those set forth above.

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4). Claims 9, 10, 20, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the 0.50- 95 Winchester as disclosed in Cartridges of the World by Barnes, in view of Precision Reloading by Jamison, January 1996, as applied to Claims 1 to 8, 12 to 17, and 19 in further view Schuerman (U.S. 4,920,677) for the reasons set forth in Office action dated July 26 2004, item 3).

Applicant's arguments filed January 03 2005 have been fully considered but they are not persuasive. In response to applicant's arguments in the 37 CFR 1.132 Declaration and the Remarks (pages 14-16 of the January 03 2005 Amendment) it is the examiner's position that that, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

The applicant appears to making an argument that the prior art cited in the Office action dated July 26 2004, does not define over the applicant's invention because the said prior art would quote ***constitute a dangerous mismatch of firearm and cartridge***. It is the examiner's position that safety considerations are not a consideration cited anywhere in the claim language and furthermore the prior art is capable of being used at the pressures noted and if only operated for one time only, would still define over the applicant's claims. It is also noted that in the applicant's latest IDS dated

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January 03 2005, items CO and CP cite circumstances wherein the applicant has failed to supply firing test information to show that a .300 cartridge is not capable of withstanding internal gas pressures of at least 50,000 psi.

Accordingly claims 9, 10, 20, 21 are rejected for the reasons set forth in Office action dated July 26 2004, and for those set forth above.

5). Claims 22 to 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the 0.50- 95 Winchester as disclosed in Cartridges of the World by Barnes, in view of Precision Reloading by Jamison, January 1996.

The 0.50-95 Winchester cartridge discloses the claimed dimensions and disclosed shoulder angles of 30, 35, and 40 degrees that read on claims 24-31, and 33-39, are disclosed in the said Jamison document showing that it is well known in the firearm art to have shoulders angles as sated and in addition Jamison also teaches firearms which can withstand gas pressures up to 65,000 psi. It would therefore have been obvious to one having ordinary skill in the art at the time of the invention to size and shape a chamber firearm for 0.50-95 Winchester cartridge to firmly support the cartridge during firing and to have shoulder angle as taught by Jamison.

6). Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7). Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Richardson whose telephone number is (703) 305 0764. The examiner can normally be reached on Monday to Thursday from 7.00 AM to 4.30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on (703) 306 4198. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 1113.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications can be obtained from either private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <[http:// pair-direct.uspto.gov](http://pair-direct.uspto.gov)>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 1113.

John Richardson, PE,

January 31 2005.


MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER